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AT SEATTLE  
DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PAIGE KAYNER

and

CHRISTOPHER EMBREY,

Plaintiffs,

v.

THE CITY OF SEATTLE,  
a municipal corporation,

and

JOHN DOE #1, in his capacity as a police  
officer for the City of Seattle and as an  
individual,

and

JOHN DOE #2, in his capacity as a police  
officer for the City of Seattle and as an  
individual,

Defendants.

CV4 2567p

COMPLAINT FOR DAMAGES

04-CV-02567-CMP

COMPLAINT FOR DAMAGES - 1

MUENSTER & KOENIG  
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319314 Sliss

INTRODUCTION

1. This is a civil action seeking damages against the above-named defendants. The civil claims include a common law tort cause of action, statutory causes of action, and offenses committed under color of law resulting in a deprivation of rights secured by the Constitution and laws of the United States of America.

JURISDICTION AND VENUE

2. This Court has personal and subject matter jurisdiction over plaintiffs' federal civil rights claims under Title 42, United States Code, § 1983, and Title 28, United States Code, §§ 1331 and 1343(a)(3).

3. This Court has pendent jurisdiction over plaintiffs' state law claim and over defendants as to said claim, pursuant to Title 28, United States Code, § 1367 (Judicial Improvements Act of 1990), Public Law No. 101-650, 104 Stat. 5089 (1990).

4. The acts and omissions complained of herein occurred in King County, Washington, and the defendants are residents and citizens of the State of Washington.

5. *Plaintiffs are residents and citizens of the state of Washington.*

6. Venue in this Court is proper pursuant to Title 28, United States Code, § 1391.

PARTIES

7. Plaintiff Paige Kayner is a citizen of the United States and a citizen and resident of the state of Washington.

8. Plaintiff Christopher Embrey is a citizen of the United States and a citizen and resident of the state of Washington.

9. Defendant City of Seattle is a municipal corporation organized under the laws of the State of Washington. Defendant City of Seattle is sued directly under Title 42, United States Code, § 1983 as to the federal causes of action, and under the doctrine of *respondeat superior* as to the state law cause of action.

10. Defendant City of Seattle includes, as one of its agencies, the Seattle Police Department.

11. At all times material to this complaint, police officer defendant John Doe #1 was employed by defendant City of Seattle. At all times material to this complaint, defendant John Doe #1 was an agent and employee of defendant City of Seattle and was acting within the scope of his employment with the City of Seattle, under color of the laws of the State of Washington.

12. Defendant John Doe #1 is sued in his individual capacity and in his official capacity as an agent and employee of defendant City of Seattle.

13. At all times material to this complaint, police officer defendant John Doe #2 was employed by defendant City of Seattle. At all times material to this complaint, defendant John Doe #2 was an agent and employee of defendant City of Seattle and was acting within the

1  
2 scope of his employment with the City of Seattle, under color of the laws of the State of  
3 Washington.

4 14. Defendant John Doe #2 is sued in his individual capacity and in his official  
5 capacity as an agent and employee of defendant City of Seattle.  
6

7 FACTUAL ALLEGATIONS  
8

9 15. In 2001, plaintiff Paige Kayner was a small business owner in the Pike/Pine  
10 neighborhood on Capitol Hill in the City of Seattle. She lived a few blocks from her business  
11 with her friend, plaintiff Christopher Embrey.  
12

13 16. On New Year's Eve, December 31, 2001, defendant City of Seattle sent officers  
14 of the Seattle Police Department to the Capitol Hill area. The officers patrolled the streets.  
15 They were armed with weapons provided by the City, including pepper spray, to use against  
16 citizens in the Capitol Hill area.  
17

18 17. Pepper spray is a dangerous chemical weapon.  
19

20 18. Approximately half an hour before midnight on New Year's Eve, 2001,  
21 plaintiffs took their cameras and went to the Seattle Central Community College campus to  
22 ring in the new year, as they had for the past two years, by watching the fireworks coming  
23 from the top of the Space Needle.  
24

25 19. There was a parade in the streets, apparently led by a band called the Infernal  
26 Noise Brigade. The mood was celebratory, like a party. Plaintiffs took photographs of the  
27 people headed to the college campus.  
28

1  
2           20.     Plaintiffs arrived on the lawn near the southwest corner of the Seattle Central  
3 Community College campus approximately ten minutes before midnight.

4           21.     Plaintiffs watched the Space Needle fireworks, extended New Years' wishes,  
5 and prepared to walk home.

6           22.     A number of people were gathered in the intersection at Pine Street and  
7 Harvard Avenue on Capitol Hill. As plaintiffs watched, officers of the Seattle Police  
8 Department entered the intersection with fire extinguishers, chemical spray, batons and  
9 bicycles. Plaintiffs observed the police pepper-spray people who were not in the parade and  
10 on the sidewalks.

11  
12           23.     Plaintiffs stood on the lawn of the community college campus with their  
13 cameras. Seattle Police Department officers approached them.

14  
15           24.     As plaintiff Paige Kayner took photographs, defendant John Doe #1 lifted his  
16 canister and shot pepper spray at her. Plaintiff experienced immediate, intense pain and fear.

17           25.     Plaintiff asked defendant John Doe #1 why he sprayed her. Defendant John  
18 Doe #1 pepper-sprayed her again.

19  
20           26.     Plaintiff Christopher Embrey asked defendant John Doe #1 why he pepper  
21 sprayed Ms. Kayner and told John Doe #1 that they lived there.

22           27.     Defendant John Doe #2 then sprayed plaintiff Christopher Embrey in the face  
23 at close range. Plaintiff Christopher Embrey experienced immediate intense pain and fear.  
24 He fell to the ground as defendants John Doe #1 and #2 stood watching.

1  
2 28. Neither defendant John Doe #1, defendant John Doe #2, nor any of the other  
3 Seattle police officers present provided or attempted to provide any water or other first aid to  
4 plaintiffs after they were pepper-sprayed.

5 29. Seattle police officers told the plaintiffs they had to leave and to move up the  
6 hill.

7  
8 30. Defendant City of Seattle failed to properly supervise defendants John Doe #1  
9 or John Doe #2.

10 31. Defendant City of Seattle failed to train defendants John Doe #1 and John Doe  
11 #2 not to fire chemical weapons at unarmed civilians who were at the scene taking  
12 photographs.

13  
14 32. Plaintiffs were unarmed, peaceful, and did not verbally or physically threaten  
15 the defendants in any way.

16 33. As a result of the acts and omissions of defendants, plaintiffs suffered personal  
17 injuries including, but not limited to, bodily injury, pain and suffering, emotional distress, fear  
18 and other consequential damages.

19  
20 FIRST CAUSE OF ACTION:  
21 VIOLATION OF THE FIRST AMENDMENT  
22

23 34. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
24 every allegation of paragraphs 1 through 33.

25 35. The acts and omissions of defendants herein were done under color of state law,  
26 custom or usage.

27 COMPLAINT FOR DAMAGES - 6  
28

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2 36. Paige Kayner and Christopher Embrey had a federally-protected right, under  
3 the freedom of speech and assembly provisions of the First Amendment to the United States  
4 Constitution, to be present on Capitol Hill and to photograph the New Year's Eve events.

5 37. The acts and omissions of defendants herein proximately caused the deprivation  
6 of the First Amendment rights of the plaintiffs.  
7

8 38. As a proximate result of the acts and omissions of defendants and deprivation  
9 of plaintiffs' First Amendment rights, plaintiffs suffered personal injuries as set forth  
10 hereinabove.  
11

12 SECOND CAUSE OF ACTION:  
13 VIOLATION OF THE FOURTH AMENDMENT PROHIBITION  
14 AGAINST UNREASONABLE SEIZURES

15 39. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
16 every allegation of paragraphs 1 through 38.

17 40. The acts and omissions of defendants herein were done under color of state law,  
18 custom or usage.  
19

20 41. Paige Kayner and Christopher Embrey were seized, for purposes of the Fourth  
21 Amendment to the United States Constitution, by the acts and omissions of defendants set forth  
22 herein.

23 42. Paige Kayner and Christopher Embrey had a federally-protected right, under  
24 the Fourth Amendment, not to be subjected to an unreasonable seizure.  
25

1  
2           43.    *The acts and omissions of defendants herein proximately caused the deprivation*  
3 *of the Fourth Amendment rights of the plaintiffs.*

4           44.    As a proximate result of the acts and omissions of defendants and deprivation  
5 of plaintiffs' Fourth Amendment rights, plaintiffs suffered personal injuries as set forth  
6 hereinabove.  
7

8                           **THIRD CAUSE OF ACTION:**  
9                           **VIOLATION OF FOURTH AMENDMENT**  
10                           **PROHIBITION AGAINST THE USE OF UNREASONABLE FORCE**

11           45.    Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
12 every allegation of paragraphs 1 through 44.  
13

14           46.    The acts and omissions of defendants herein were done under color of state law,  
15 custom or usage.

16           47.    Paige Kayner and Christopher Embrey were seized, for purposes of the Fourth  
17 Amendment to the United States Constitution, by the acts and omissions of defendants as set  
18 forth herein.  
19

20           48.    Paige Kayner and Christopher Embrey had a federally-protected right, under  
21 the Fourth Amendment, not to be subjected to the use of unreasonable force against their  
22 persons.  
23

24           49.    The acts and omissions of defendants herein proximately caused the deprivation  
25 of the Fourth Amendment rights of the plaintiffs.  
26



1  
2 50. As a proximate result of the acts and omissions of defendants and the  
3 deprivation of plaintiffs' Fourth Amendment rights, plaintiffs suffered personal injuries as set  
4 forth hereinabove.

5  
6 FOURTH CAUSE OF ACTION:  
7 VIOLATION OF THE FOURTEENTH  
8 AMENDMENT DUE PROCESS CLAUSE

9 51. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and  
10 every allegation of paragraphs 1 through 50.

11 52. The acts and omissions of defendants herein were performed under color of  
12 state law, custom or usage.

13 53. Paige Kayner and Christopher Embrey had federally-protected rights, under the  
14 Due Process Clause of the Fourteenth Amendment to the United States Constitution, to remain  
15 in a public place of their choice and the right to move from one place to another, in order to  
16 observe and photograph the New Year's Eve events on Capitol Hill.

17 54. The acts and omissions of defendants herein proximately caused the deprivation  
18 of plaintiffs' Fourteenth Amendment rights.

19 55. As a proximate result of the acts and omissions of defendants, plaintiffs suffered  
20 personal injuries as set forth hereinabove.

FIFTH CAUSE OF ACTION:  
MUNICIPAL LIABILITY OF THE CITY OF SEATTLE

56. Plaintiffs hereby incorporate and reallege as though fully set forth herein each and every allegation of paragraphs 1 through 55.

57. At all times material to this complaint, defendant City of Seattle, by and through its chief of police, had in effect certain explicit and *de facto* policies, practices and customs which were applied to the treatment of civilians on Capitol Hill during the New Year's Eve events, including the use of chemical weapons against innocent civilians such as plaintiffs Paige Kayner and Christopher Embrey.

58. For purposes of the incident described herein, it was the policy, custom and practice of the City of Seattle to utilize unreasonable force in violation of the First, Fourth and Fourteenth Amendment rights of the plaintiffs, set forth hereinabove.

59. It was further the policy of the City of Seattle, by and through the chief of police, to approve, acquiesce, condone and ratify the use of unreasonable force in violation of the First, Fourth and Fourteenth Amendment rights of the plaintiffs in the incident described hereinabove.

60. For purposes of liability for said policies, practices and/or customs, the chief of police was the authorized policy-maker on police matters, and his decisions, explicit and *de facto*, were and are binding on defendant City of Seattle.

61. The policy, practice and custom of approving, acquiescing in, condoning and/or ratifying the use of unreasonable force in violation of the First, Fourth and Fourteenth

1  
2 Amendment rights of the plaintiffs in the incident described herein was a deliberate choice by  
3 defendant City of Seattle, by and through its chief of police.

4 62. These policies, practices and customs were maintained with deliberate, reckless  
5 and/or callous indifference to the constitutional rights of the plaintiffs as set forth hereinabove.

6 63. The above-described policies, practices and customs of defendant City of Seattle  
7 proximately caused the deprivation of the First, Fourth and Fourteenth Amendment rights of  
8 the plaintiffs.

9 64. As a proximate result of the above-described policies, practices and customs of  
10 defendant City of Seattle, and as a result of the deprivation of plaintiffs' First, Fourth and  
11 Fourteenth Amendment rights, plaintiffs suffered personal injuries as set forth hereinabove.

12 65. At all times material herein, defendant City of Seattle had a duty, under the  
13 United States Constitution, to properly supervise its police officers.

14 66. At all times material herein, defendant City of Seattle had a duty, under the  
15 Fourth Amendment to the United States Constitution, to train its police officers not to attack  
16 innocent people with chemical weapons, including pepper spray.

17 67. Defendant City failed to properly supervise defendants John Doe #1 and #2.

18 68. Defendant City failed to properly train defendants John Doe #1 and #2.

19 69. The above-described failures to supervise and to train were maintained with  
20 deliberate, reckless and/or callous indifference to the constitutional rights of the plaintiffs as  
21 set forth hereinabove.

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2           70.    The above-described failures by defendant City to properly supervise and to  
3 properly train defendants John Doe #1 and #2 proximately caused the deprivation of the  
4 constitutional rights of the plaintiffs as set forth hereinabove.

5           71.    As a proximate result of the failure of defendants to properly supervise and  
6 train, and as a result of the deprivation of plaintiffs' constitutional rights, plaintiffs suffered  
7 personal injuries as set forth hereinabove.  
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SIXTH CAUSE OF ACTION:  
NEGLIGENCE

72. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every allegation of paragraphs 1 through 71.

73. Defendants had a general affirmative duty toward the public and had a special affirmative duty toward the plaintiffs to refrain from causing injury to plaintiffs in accordance with the applicable standard of care.

74. The acts and/or omissions of defendants, and each of them, were a breach of the duty of care defendants, and each of them, owed to the plaintiffs.

75. As a direct, proximate and foreseeable result of the negligence of defendants, and each of them, plaintiffs sustained personal injuries as described hereinabove, and were damaged in an amount in excess of the minimum jurisdiction of this Court.

76. Defendant City of Seattle is liable for the actions of defendants John Doe #1 and #2 under the doctrine of *respondeat superior*. Defendants John Doe #1 and #2 are not being sued in this cause of action.

PUNITIVE DAMAGES ALLEGATIONS

77. Plaintiffs hereby incorporate and reallege as if fully set forth herein each and every allegation of paragraphs 1 through 76.

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2           78.     The acts and omissions of defendants herein were motivated by evil motive or  
3 intent, or involved reckless or callous indifference to the constitutional rights of the plaintiffs  
4 as set forth hereinabove.

5           79.     Defendant City of Seattle should indemnify the individual defendants for any  
6 damages awarded against them at the trial of this action, including punitive damages.

7  
8           80.     Defendant City of Seattle is responsible for the fault of the individual defendants  
9 because the individual defendants were acting as agents or servants of the City. Defendant  
10 City of Seattle is liable for all damages awarded against the individual defendants, including  
11 punitive damages. RCW 4.22.070(1)(a).

12  
13           81.     Since plaintiffs Paige Kayner and Christopher Embrey are fault-free plaintiffs,  
14 defendant City of Seattle is jointly and severally liable for all damages awarded, including  
15 punitive damages. RCW 4.22.070(1)(b).

16  
17                   PRAYER FOR RELIEF

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19           WHEREFORE, plaintiffs pray for relief as follows:

20           Compensatory Damages: The defendants should be required to pay compensatory  
21 damages in an amount to be proven at trial.

22           Punitive Damages: The defendants should be required to pay punitive damages in an  
23 amount to be proven at trial pursuant to Title 42, United States Code, § 1983; Title 42, United  
24 States Code, § 1988; RCW 4.22.070(1)(a); and RCW 4.22.070(1)(b).

1  
2 Attorneys' Fees: The defendants should be required to pay the plaintiffs' reasonable  
3 attorneys' fees and costs pursuant to Title 42, United States Code, § 1988.

4 Other Relief: The Court should grant the plaintiffs such other and further relief as the  
5 Court deems just and equitable.

6 DATED this the 30th day of December, 2004.

7  
8 Respectfully submitted,

9 MUENSTER & KOENIG

10  
11 By: 

12 JOHN R. MUENSTER

13 WSBA No. 6237

14 Attorney at Law

15 Of Attorneys for Plaintiffs Paige Kayner and  
16 Christopher Embrey  
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